

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL B. BROCKWAY,

Petitioner,

04-CV-6254 (CJS)(VEB)

-vs-

JOHN W. BURGE, Superintendent,

Respondent.

DECISION and ORDER
ADOPTING REPORT
and
RECOMMENDATION

The Honorable Victor E. Bianchini, United States Magistrate Judge, having issued a Report and Recommendation (Docket No. [#20]) on March 16, 2010, recommending that this action be dismissed as untimely, and no objection having been filed within the time specified for doing so, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1)(C), the Court accepts and adopts the Report and Recommendation (Docket No. [#20]) in its entirety, and, for the reasons stated in the Report and Recommendation, this action is dismissed.

Pursuant to 28 U.S.C. § 2253, the Court declines to issue a certificate of appealability, since Petitioner has not made a substantial showing of the denial of a constitutional right.

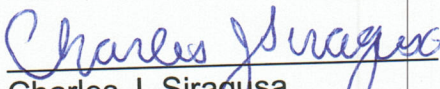
Petitioner must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within thirty (30) days of the date of judgment in this action. The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a), that any appeal from this Order would not be taken in good faith and leave to appeal to

the Court of Appeals as a poor person is denied. *Coppedge v. United States*, 369 U.S. 438 (1962). Further requests to proceed on appeal *in forma pauperis* should be directed on motion to the United States Court of Appeals for the Second Circuit in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

Dated: April 15, 2010
Rochester, New York

ENTER:


Charles J. Siragusa
United States District Judge